

JAVIER J. ROMAGUERA,
an individual,

Plaintiff,

vs.

CITY OF MIAMI GARDENS,

Defendant.

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT, IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

CASE NO.

PLAINTIFF'S COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, JAVIER ROMAGUERA, ("ROMAGUERA"), by and through his undersigned attorney, sues Defendant, CITY OF MIAMI GARDENS, ("The CITY") a political subdivision of the State of Florida, for violation of Florida's Civil Rights Act of 1992, and in support thereof, alleges as follows:

INTRODUCTION

1. This is a sex and national origin discrimination and retaliation action brought by a Hispanic male, ROMAGUERA, who is employed as a Probationary Police Sergeant for Defendant in violation of the Florida Civil Rights Act of 1992, Chapter 760, Florida Statutes. Plaintiff, ROMAGUERA, seeks injunctive relief and monetary damages to remedy the discrimination and retaliation he has suffered, and continues to suffer, as a result of the discriminatory treatment and retaliation by Defendant.

VENUE & JURISDICTION

2. This is an action for monetary damages in excess of fifteen thousand dollars (\$15,000.00) exclusive of interest, attorneys' fees, and costs brought by Plaintiff, ROMAGUERA, against Defendant, CITY OF MIAMI GARDENS, for violation of the Florida Civil Rights Act of 1992.

3. Venue is proper in this Court because Defendant's principal place of business is in Miami-Dade County and the majority of Defendant's employees are located in Miami-Dade County, Florida, and the acts and/or omissions that give rise to this Complaint occurred in Miami-Dade County, Florida and Plaintiff resides in Miami-Dade County, Florida.

THE PARTIES

4. Plaintiff, ROMAGUERA, is, and at all times material hereto an individual who resides in Miami-Dade County, Florida and who is Hispanic (of Cuban origin).

5. Plaintiff, ROMAGUERA, was at all times material hereto an employee of Defendant, CITY OF MIAMI GARDENS.

6. Defendant, CITY OF MIAMI GARDENS, at all times material hereto, employed 15 or more employees and is and was an "employer" as defined by § 760.02(7), Florida Statutes.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

7. Plaintiff, ROMAGUERA, timely filed a Charge of Discrimination with the Equal Employment Opportunity Commission ("EEOC"). More than 180 days have passed since the filing of the EEOC Charge and a Notice of Right to Sue has been issued.

8. Plaintiff has exhausted all administrative remedies necessary before filing this lawsuit.

ALLEGATIONS

9. Plaintiff is a male of Cuban national origin. He is employed by Defendant as a Probationary Police Sergeant.

10. ROMAGUERA was qualified to perform his duties, and has performed his duties with distinction.

11. On March 22, 2016, Plaintiff disciplined one of his subordinates for watching a video

on a tablet device while on a service call. Interim Police Chief Cynthia Mechanic referred to Plaintiff's action as "poor decision making" because she was not satisfied that Plaintiff issued a "record of counseling" instead of a "Disciplinary Action Report".

12. After responding to the Interim Police Chief's written request, Plaintiff subsequently changed the discipline to what Mechanic demanded.

13. The amended discipline was rescinded by the Human Resources department and the original discipline by Plaintiff (record of counseling) was administered.

14. The second incident that Mechanic labeled as "poor decision making" occurred on July 22, 2016, when Plaintiff emailed the Professional Compliance Unit about an officer that had concerns about a probationary officer's ideology.

15. The officer's concern had the potential of affecting the City of Miami Gardens negatively. Because this concern had the potential of being criminal in nature as well, Plaintiff did not notify his entire chain of command.

16. Based on Plaintiff's past experience with the Professional Compliance Unit, informing his entire chain of command would have involved them in an internal affairs investigation.

17. Giving his entire chain of command notification of the new information presented to Plaintiff, would not have been appropriate as Plaintiff is not allowed to disclose an applicant's background with anyone other than the Professional Compliance Unit

18. Plaintiff attempted to contact members of the Professional Compliance Unit and his immediate supervisor, Captain Rovinelli.

19. Sometime during the same day, Major Rafael Suarez contacted Plaintiff about the email and advised Plaintiff that the Interim Police Chief Mechanic was furious with Plaintiff's decision to violate the chain-of-command.

20. Plaintiff explained to Major Rafael Suarez that he copied his immediate supervisor, Captain Rovinelli, and explained that as a background investigator, Plaintiff could not violate the Florida Code in connection with conducting background investigations. The Major understood the circumstances of the situation and agreed with Plaintiff's actions.

21. Months later, Plaintiff learned that the Interim Police Chief ordered Plaintiff's Captain to change his evaluation to reflect two incidents that she categorized as "poor decision making" on Plaintiff's evaluation to decrease his performance score.

22. Shortly thereafter, the Interim Police Chief presented Plaintiff with his evaluation and placed him on a 90-day performance plan.

23. The poor evaluation and the 90 day performance plan constituted adverse employment actions.

24. Plaintiff was being treated differently because he was a Cuban male.

25. Plaintiff complained that he was being treated differently because he was a Cuban male.

26. Soon thereafter, Plaintiff was relieved of his supervisory duties and reassigned to the front desk, hindering his ability to perform as Police Sergeant. These actions were also adverse employment actions.

27. Again, Plaintiff complained that he was being discriminated against.

28. The Interim Police Chief falsely claimed that her decision was solely based on Plaintiff's "poor decision making" incidents and not the internal affairs investigation.

29. As a result of Mechanic's actions, Plaintiff was demoted on February 8, 2017, for failure to complete his probation as sergeant.

30. The Interim Police Chief told Plaintiff that his demotion stemmed from the three incidents that were mentioned in Plaintiff's performance evaluation; two for poor decision making and

one for violating department policies.

31. On January 5, 2017, Plaintiff was terminated from his position with the City of Miami Gardens.

32. Subsequent to the termination of his employment, Plaintiff requested the assistance of the PBA.

33. From January, 2017 through October 2018, Plaintiff was relieved of duty with pay, pending termination.

34. Plaintiff was ordered to remain at home until the termination decision was rendered final. Plaintiff was confined to his home, deprived of the ability to perform any actual police work, until the final determination was made. This was another adverse employment action.

35. On February 27, 2017, Plaintiff filed an EEOC Charge, alleging discrimination based on his sex (male) and national origin (Cuban).

36. On October 25, 2018, Plaintiff was terminated from his position on the recommendation of then Interim Police Chief, Cynthia Mechanic.

37. Plaintiff was subjected to discriminatory treatment by the Interim Police Chief, Cynthia Mechanic.

38. Plaintiff was subjected to different terms and conditions for actions as compared to similarly situated Sergeants.

39. One example, a black/American female Sergeant, Vetrus Quintana, had real deficiencies in poor decision making. Sergeant Quintana was never relieved of her supervisory authority, nor was she assigned to the front desk. Plaintiff's comparator was placed on a performance improvement plan and was allowed to continue to perform her duties as a police sergeant. She was not demoted and she was not subject to termination.

40. Another example of being subject to different terms and conditions, Police Sergeant, Lisa Bradshaw (White/American) was found to have made “poor decision making” and was placed on a 90-day performance plan, her probation was extended, and she was reassigned from Operations (patrol) to Special Operations, Auto Theft Unit and not terminated.

41. Plaintiff complained to Human Resources and requested that they investigate Plaintiff’s allegations to determine why he was being subject to discrimination.

42. Plaintiff was advised by Human Resources that an investigation could not be conducted unilaterally.

43. Plaintiff was discriminated against due to his national origin (Cuban) and his sex (male).

44. Further, Defendant’s acts and/or omissions set forth herein constitute conduct on the part of Defendant demonstrating a willful and wanton indifference to the protected rights of Plaintiff.

45. Plaintiff has retained the Law Offices of Shawn L. Birken, P.A. to represent him in this litigation and has agreed to pay the firm a reasonable fee for their services.

COUNT I

DISCRIMINATION IN VIOLATION OF FCRA § 760.10

Plaintiff realleges and reavers paragraphs 1 through 45 of this Complaint as if fully set forth herein.

46. Defendant has discriminated against Plaintiff in the terms and conditions of his employment by disciplining, demoting and terminating his employment.

47. At all times material hereto, Plaintiff is a Hispanic male of Cuban national origin.

48. As a direct and foreseeable result of Defendant’s discriminatory conduct, Plaintiff suffered economic losses, intangible losses, and emotional harm and distress.

49. Defendant's conduct, as set forth above, constitutes intentional and unlawful discrimination on the basis of race in violation of the Florida Civil Rights Act of 1992 § 760.10, Florida Statutes.

50. As a direct and proximate result of Defendant's unlawful employment practices and policies, Plaintiff has suffered damages and will continue to suffer injury and damages in the future, including but not limited to:

- a. Loss of past and future income;
- b. Stress, anxiety, and emotional distress;
- c. Other financial losses.

51. Plaintiff is entitled to an award of reasonable attorney's fees, expert fees, costs and expenses related to this litigation pursuant to § 760.11 (5), Florida Statutes and has retained the undersigned law firm to bring this action on his behalf.

WHEREFORE, Plaintiff respectfully requests that this Court find in favor of Plaintiff and:

- a. Declare that the acts and practices complained of herein are in violation of the FCRA;
- b. Permanently enjoin Defendant from continuing and/or maintaining the policy, practice and custom of denying, abridging, withholding or conditioning the state protected rights of employees on the basis of sex and national origin;
- c. Award Plaintiff back pay, prejudgment interest, post judgment interest, and damages for all employment benefits Plaintiff would have received but for the discriminatory acts and practices of Defendant;
- d. Award Plaintiff compensatory and consequential damages for his mental anguish and humiliation pursuant to § 760.11 (5), Fla.Stat.;
- e. Award reasonable attorneys' fees and costs incurred in this action pursuant to § 760.11

(5), Fla.Stat.; and

f. Order any other and further relief this Court deems to be just and proper.

COUNT II

RETALIATION IN VIOLATION OF FCRA § 760.10

Plaintiff realleges and reavers paragraphs 1 through 45 of this Complaint as if fully set forth herein.

52. Defendant has discriminated against Plaintiff in the terms and conditions of his employment, up to and including termination in retaliation for his complaints of discrimination.

53. Defendant's conduct, as set forth above, constitutes intentional and unlawful discrimination on the basis of retaliation in violation of the Florida Civil Rights Act of 1992 § 760.10, Florida Statutes.

54. As a direct and proximate result of Defendant's unlawful employment practices and policies, Plaintiff has suffered damages and will continue to suffer injury and damages in the future, including but not limited to:

- a. Loss of past and future income;
- b. Stress, anxiety, and emotional distress;
- c. Other financial losses.

55. Plaintiff is entitled to an award of reasonable attorney's fees, expert fees, costs and expenses related to this litigation pursuant to FS § 760.11 (5), Florida Statutes and has retained the undersigned law firm to bring this action on her behalf.

WHEREFORE, Plaintiff respectfully requests that this Court find in favor of Plaintiff, and:

- a. Declare that the acts and practices complained of herein are in violation of the FCRA;

- b. Permanently enjoin Defendant from continuing and/or maintaining the policy, practice and custom of denying, abridging, withholding or conditioning the state protected rights of employees on the basis of complaints for discrimination;
- c. Award Plaintiff front pay in lieu of reinstatement;
- d. Award Plaintiff back pay, prejudgment interest, post judgment interest, and damages for all employment benefits Plaintiff would have received but for the discriminatory acts and practices of Defendant;
- e. Award Plaintiff compensatory and consequential damages for his mental anguish and humiliation pursuant to FS §760.11 (5);
- f. Award reasonable attorneys' fees and costs incurred in this action pursuant to FS § 760.11 (5); and
- g. Order any other and further relief this Court deems to be just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands trial by jury on all issues so triable by right.

Dated this 26th day of October, 2018.

LAW OFFICES OF
SHAWN L. BIRKEN, P.A.
Counsel for Plaintiff
100 SE 3rd Ave., Suite 1300
Fort Lauderdale, Florida 33394
Tel: (954) 990-4459
Fax: (954) 990-4469
Primary eMail: sbirken@birken-law.com
Secondary eMail: acabello@birken-law.com

By: /s/ Shawn L. Birken
SHAWN L. BIRKEN
FBN: 418765
FOR THE FIRM